

**MAR 31 2006****CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****JAMES RAPHAEL METTERS,**

Petitioner-Appellant,

v.

**CHARLES T. RANSDALL,**

Respondent-Appellee.

No. 05-15574

D.C. No. C 03-3994 MHP (PR)

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Northern District of California  
Marilyn H. Patel, District Judge, Presiding

Argued and Submitted February 17, 2006  
San Francisco, California

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

James Metters (“Metters”) seeks habeas review of his California robbery conviction, claiming a violation of his rights (1) under the Sixth and Fourteenth Amendments by the improper dismissal of a juror and (2) under the Fifth, Sixth, and Fourteenth Amendments by the over-intrusive questioning of the jurors.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Metters failed to show that the state courts made an unreasonable determination of the facts with regard to the juror dismissal. *See* 28 U.S.C. § 2254(d)(2); *Taylor v. Maddox*, 366 F.3d 992, 999-1000 (9th Cir. 2004).

Further, Metters did not raise the issue of over-intrusive questioning in his state-court direct appeal. California has a clear rule mandating that appellants raise any issue within their opening briefs, and the California Supreme Court dismissed Metter's overly intrusive questioning argument based on that rule. *See, e.g., Tiernan v. Trs. of Cal. State Univ. & Colls.*, 655 P.2d 317, 320 n.4 (Cal. 1994). When, as here, a state court finds a petitioner's federal claim barred because of an independent and adequate state rule, federal review of that claim is barred unless the petitioner can demonstrate cause for the default and prejudice as a result of the alleged violation of federal law, or, that failure to consider the claim will result in a fundamental miscarriage of justice. *See Coleman v. Thompson*, 501 U.S. 722, 750 (1991). Metters has not met either standard.

**AFFIRMED.**